SUPREME COURT, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1960

No. ~~991~~ 112

JAMES JOSEPH CENAC,

Petitioner,

vs.

STATE BOARD OF LAW EXAMINERS OF ARKANSAS,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Arkansas, entered in the above entitled case on March 13, 1961.

Opinions Below

The Per Curiam Order, dated March 13, 1961, denying the motion for default judgment (R. 26) is unreported. The Per Curiam Opinion entered after the record for certiorari to this Court had been ordered, and dated March 27, 1961 is unreported (R. 27). Both the Per Curiam Order and the Per Curiam Opinion are in the record and printed in Appendix E.

Jurisdiction

The judgment of the Supreme Court of Arkansas was entered March 13, 1961, and after the record for petition for writ of certiorari had been ordered an opinion was written on March 27, 1961 (R. 27). The jurisdiction of this Court is invoked under 28 U.S.C.A. 1257 (3) Also see *Market Street Railway Co.* v. *Railroad Commission of Calif.*, 324 U.S. 548, 89 L ed. 1171; *Louisiana Nav. Co.* v. *Oyster Commission*, 226 U.S. 99, 57 L ed. 138; *Department of Banking* v. *Pink*, 317 U.S. 164, 87 L ed. 234; *Georgia R. & Power Company* v. *Decatur*, 262 U.S. 432, 67 L ed. 1065; all holding that the test is not whether under local rules of practice the judgment be denominated final, but whether such adjudication by the State court is an effective determination of litigation. This Court has jurisdiction where the highest court of the state had original jurisdiction and there is no other State court in which to review the matter. The Federal Question was raised in the first instance in the Petition To Admit To Practice Of Law, filed in the Supreme Court of Arkansas, as an original action (R. 3), alleging among other things that petitioner had been denied the right to practice law in violation of the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, (R. 5) in that he had not been given credit for grades he actually earned in taking the Bar examination and in that the Chairman of the Board of Law Examiners had considered the petitioner to be a member of the Communist party and not to be of good moral character, which was and is denied as being absolutely untrue.

That the actions of the Supreme Court of Arkansas in deciding the case before the same had been officially docketed, (R. 29) and in refusing to make an order after an unofficial investigation, at which no opportunity was given

to put on any testimony whatsoever constituted a violation of petitioners rights under the Fourteenth Amendment to the Constitution of the United States.

The actions of the Supreme Court of Arkansas, after the case had been officially docketed at said court's request, denying the petitioners motion for default judgment, and entering a nunc pro tunc order permitting the respondents to answer after the petition for default judgment had been filed, constituted a denial of petitioners rights under the Fourteenth Amendment to the Constitution of the United States; and the actions of the Supreme Court of Arkansas in writing a Per Curiam Opinion after the record had been ordered for certiorari to this court constituted a denial of petitioners rights under the Fourteenth Amendment to the Constitution of the United States. The whole pattern being to deny petitioner the right to practice law, in violation of the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, regardless of any steps taken by him to become licensed.

This being a question and matter never having been passed upon under the present laws of Arkansas and in the history of Arkansas, presents a question of first impression and it is of utmost importance that this question should be resolved once and for all, the Supreme Court of Arkansas being the trial court under the apparent, but unknown heretofore, procedure.

Questions Presented

Did the State Board of Law Examiners deny petitioners right to practice law in violation of the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

Did the Supreme Court of Arkansas commit error in

deciding the question of petitioners right to practice before the case was docketed officially, and did the actions of the Supreme Court of Arkansas violate the petitioners rights under the Due Process of Law and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States in refusing to grant the motion for default judgment and entering a nunc pro tunc order after the motion for default judgment had been filed, and the time had lapsed for the filing of same, permitting respondents to answer; and in writing an opinion to same after the order denying the motion for default judgment had been entered and after the record had been ordered for certiorari to this court; and did these actions constitute a pattern depriving petitioner of his rights in violation of the Due Process and Equal Protection of the Laws Clauses under the Fourteenth Amendment to the Constitution of the United States?

Statutes Involved

The pertinent statutory provisions and the pertinent provision of the Constitution of Arkansas and the Rules of the Supreme Court of Arkansas are printed in the appendices A, B, C, infra pp. 21, 23, 24.

Statement of Case

The appellant, in this case, graduated from the Arkansas State Teachers College in 1954 with a Bachelor of Science Degree, and from Arkansas Law School in 1957, with a Bachelor of Laws Degree. His scholastic average was good. He has taken the Bar Examination seven times, beginning July 1957 and ending July 1960. For some reason he has not been recommended for a license to practice law.

The writer of this brief is fully certain that the appellant is fully qualified, both scholastically and morally, to be ad-

mitted to the Bar, having known him for a number of years. The writer of this brief has extensively coached the Appellant within the past two or more years, and during that time the Appellant has taken the Bar examination four times.

With the above facts in mind the Attorney for Appellant filed on December 5, 1960 with the clerk of the Supreme Court of Arkansas Appellant's PETITION TO BE ADMITTED TO PRACTICE LAW, a true copy of same was served on John H. Haley, Chairman of the State Board of Law Examiners, in person at his regularly constituted office.

Appellant in substance alleged in his petition, after a statement of his educational qualifications, that he had not received the grades that he actually earned, due to the fact that the Chairman of the Board of Law Examiners thought that the Appellant was a member of the Communist party, and of poor moral character due to past arrests, which was duly denied by the Appellant as being untrue. Appellant further alleged that the Secretary of said Board also accused him of the same as stated above, and such accusations are absolutely untrue.

Appellant further alleged in his petition that the actions of the Chairman and Secretary of the Board of Law Examiners constituted a denial of his rights in violation of the Fourteenth Amendment to the Constitution of the United States as being a denial of his right to practice law without "Due Process of Law" and without "Equal Protection of the Laws" and he had been deprived without the right to defend himself to the contrary. And that one cannot be deprived of the right to practice law, or any other occupation in a manner or for reasons contravening the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Constitution of the United States, citing numerous cases in his petition.

Appellant attached to his petition sixteen exhibits as to his good moral character, which were none other than copies of letters from Businessmen, Attorneys, and Judges recommending him to be granted a License to practice law.

Appellant prayed in his petition that the respondents be required to show cause why he should not be admitted to practice law, and upon their failure to do so, that he be granted a License to practice law.

At the time of the filing of the said petition, the Clerk of the Supreme Court of Arkansas stated to the writer of this brief that the matter should be kept quiet until he consulted with the members of the Court, that there should be no publicity and that if and when a filing fee was necessary that he would notify the writer of this brief. On or about December 14, 1960 the writer of this brief, without any other notice, was requested to appear within thirty minutes, before a committee of three Judges of the Supreme Court. Upon arriving before the committee of which only two were present, the writer of this brief found the Chairman and Secretary of the State Board of Law Examiners to be present. The hearing was merely a round table discussion of the merits of the petition, no opportunity for testimony to be taken, and it was understood that it was only preliminary off the record discussion and investigation. The appellant's constitutional rights were violated in that he was not given a chance to attend, and did not receive notice before the hearing took place.

On January 10, the writer of this brief received a letter from the Clerk of the Supreme Court, stating that the court had denied the petition. All this without any testimony being taken. The writer of this brief contacted the Clerk for a formal order, and was informed by letter on January 20, 1961, that if he wanted a formal order of the court that he would have to pay $11.50 docketing fee, and that the

same would fall under rule 17 of the Court as regard issues of fact. This was the first time that the clerk would even accept the docketing fee.

The petition was finally *formally docketed February 1, 1961.* On the same date the Clerk of the Supreme Court of Arkansas telephoned the writer of this brief stating that the case was formally docketed and that John H. Haley, Chairman of the Board of Law Examiners, had been notified of same and that no further notice was necessary, since he had already been served a copy of the pleadings, and that he had personally notified him of the docketing of the case. Immediately, the writer of this brief phoned John H. Haley, Chairman of the Board of Law Examiners, who stated to him that he would within the next few days file an answer. All this after having been served on December 5, 1960.

After waiting the proper time permitted by Law, assuming without waiving that respondent's time for answer had long since expired, on February 24, 1961, after carefully checking the Court Docket and finding that no response of any kind had been filed by the respondent, Appellant filed his MOTION FOR JUDGMENT BY DEFAULT, alleging that the petition had been filed on December 5, 1960, duly served on John H. Haley, Chairman of the State Board of Law Examiners. After an informal investigation of a committee of the court, the case was docketed reciting notice of same, and stating that no defense of any kind had been made or filed, and that the allegations should stand as confessed and that judgment by default should be granted.

On February 27, 1961 respondents answer and response to motion of petition was filed by John H. Haley, Chairman, alleging in the response to motion for default judgment that he was to file a response prior to hearing, and that it was not possible to gain admission to the Bar of Arkan-

sas by default, as no summons was issued (even in the face of actual notice of all proceedings).

In answer to the petition, in substance respondents alleged that petitioner had no right to review the action of the Board prior to July 1960, that under the system the identity of the applicant is not known by the Board, that petitioner had been unsuccessful on any Bar examination; that neither the Board's Secretary nor the Board's Chairman had any knowledge of any communist affiliation nor traffic offenses, moral character having not been considered.

Without further ado, the Supreme Court of Arkansas on March 13, 1961 by Per Curiam Order, without opinion denied Appellant's motion for default judgment. On *March 15*, the writer of this brief requested by letter addressed to the Clerk of the Supreme Court of Arkansas the exact cost of a record to the Supreme Court of the United States. On *March 24, 1961* by letter, the complete transcript for the purpose of Certiorari to this Court was ordered. Three days later, a *Per Curiam opinion was rendered by the Supreme Court of Arkansas* on *March 27, 1961*, wherein it is stated that no summons was issued but that John H. Haley Chairman was notified personally by the clerk of the filing of the petition on February 17, 1961 and the clerk granted ten days extra to file a response, thereafter on February 24, 1961 a motion for default was filed, and on February 27, 1961 an answer to the motion for default was filed, on March 6, 1961 an order overruling motion for default entered, hereafter procedure was to be under rule 17 (c) of the Supreme Court. In substance the Supreme Court of Arkansas reiterated their original findings of January 10, 1961 which was made without opportunity for any defense whatsoever, and after the record had been ordered for a Writ of Certiorari to this Court.

The crux of the whole matter is that Appellant has been

discriminated against, not only by the State Board of Law Examiners; but, by the members of the Supreme Court of Arkansas itself. The contention being that under Amendment 28, of the Arkansas Constitution, the Supreme Court of Arkansas has full power to make any and all rules regulations as to the practice of law.

The Supreme Court of Arkansas appoints all members of the State Board of Law Examiners, and tells them what subjects the applicants shall be graded upon, and the State Board of Law Examiners is an arm of and part of the Supreme Court of Arkansas. This being the case, the only procedure to follow, which is unknown in the State of Arkansas before this date, is to present your petition for admission to the Supreme Court itself, there being no written rules known to any member of the Bar to do otherwise, and for this reason the Appellant adopted the procedure in this case which is a new procedure in Arkansas. The above facts being true the writer of this brief has attempted to find some procedure at law, which appears to be a case of first impression in Arkansas, to follow. Being a case of first impression I trust this Court will bear with the writer of this brief in his contention.

The Reasons for Granting the Writ

In the case at Bar petitioner had graduated from Arkansas State Teachers College with a Bachelor of Science Degree, subsequently thereto he had graduated from Arkansas Law School with a Bachelor of Laws Degree, and has a 78 per cent average in his law study there, thereby meeting any and all educational requirements necessary.

Under the original rules if he had graduated from High School and passed the Bar he would have been eligible for a license; subsequently there to, the rules have been changed which required him to be a graduate from the

University of Arkansas Law School, and then he would have been licensed without examination; or if he had a four year College degree and was a graduate of Arkansas Law School, he would have been automatically admitted without examination, and in these cases such Law School Diploma was prima facie evidence of the holders qualifications and fitness; subsequently the rules have been changed requiring pre-law work, plus a law degree, plus examination, and then a license after that.

The petitioner began his education while the old rules were in force, but before he completed his education he was caught within the latest rules.

Under the Statutes (If he had submitted his application within that time he would have been licensed without examination) but since the rules have been changed he had to take the examination, which he has done seven times, and a License has been denied due to the allegation of a suspicion of former communist tendencies which we deny as being true, the petitioner being a Roman Catholic which is contrary to all communist teachings. The petitioner having been accused of not having a good moral character, which has been fully denied; the petitioner was denied the right to practice law, without an opportunity to put on any evidence. In the case of *Konigsberg* vs. *State Bar of California and Committee of Bar Examiners of the State of California,* 1 L ed. 2nd. 810, it was held by this Court that:

> "Constitutional Law # 408, 697—right to practice law —moral character. 3. A state's denial of a person's right to practice law on the ground that he failed to prove his good moral character and his loyalty to the United States is both arbitrary and discriminatory, and hence a denial of due process and equal protection of the laws, where there is no evidence in the record which

rationally supports a finding of doubt about his character or loyalty."

The record in this case showing, a constituted pattern to deprive him of his rights without a hearing to be granted a license to practice law.

The record showing that he filed his petition for admission to practice on December 5, 1960 and was not allowed to pay a filing fee at that time, yet he was given an opinion denying him, the right to practice law, before the case had been formally docketed. Then after his counsel requested a formal order of the denial of the petition, the case was docketed, then followed the motion for default judgment, after the time had expired, an answer was filed, and after that a nunc pro tunc order was issued extending the time for filing an answer, which was done without knowledge or consent of counsel for petitioner. Subsequently thereto the record for certiorari to this court was ordered, and two weeks later an opinion was rendered by the Supreme Court of Arkansas, apparently, designed to prevent a hearing before this Court. In the case of *Schware* v. *Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, 1 L. ed. 2d 796, 77 S.Ct. 752 the Court held:

"Constitutional Law, #324, 408, 636, 697—right to choose occupation—practice of law—1. A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the due process or equal protection clauses of the Fourteenth Amendment."

To the writer of this brief it appears to be a well constituted plan to prevent the petitioner from obtaining a license to practice law, in that petitioner had met all requirements and in the answer, filed after the time permitted by law,

of respondents herein it was stated that he should not be allowed to look at his examination papers behind July 1960. *This is an admission more or less that an examination paper before that date might reflect that he had made a sufficient grade to pass the examination.* This Court held in the case of *Schware* v. *Board of Bar Examiners of the State of New Mexico, supra,*

> "Constitutional Law #697—due process right to practice law. 14. The due process clause of the Fourteenth Amendment is violated by a state's denying an applicant the opportunity to qualify for the practice of law on the ground that he has not shown good moral character, where such a finding cannot reasonably be made on the record."

This whole matter appears a denial of Due Process since under Amendment 28 to the Constitution of Arkansas, the Supreme Court of Arkansas is charged with responsibility, to determine who shall or shall not be engaged in the practice of law. Which apparently superseded all statutes to the contrary. This being the case the State Board of Law Examiners being appointed by the Supreme Court of Arkansas is an arm of said court. This being the case the only proper procedure was to file a petition for admission to practice law within the Supreme Court itself. So, the respondents being part of the Supreme Court of Arkansas, the rules for motions in that court would govern. The rules prescribed are similar to the rules of this Court, in that notice must be had upon the opposing counsel, which was had. The record shows that the opposing counsel had full knowledge of this matter and that he appeared in December 1960 for an informal hearing before the Supreme Court of Arkansas. There is no question that the respondents had full knowledge and notice of this proceedings and

that respondents deliberately delayed in every step of the way in responding to the petition filed herein.

Exclusion from the Bar because of arrests in the past, without prosecution, trial, or arraignment, violates Due Process of Law. This Court has said in an opinion where there was shown a violation of a Constitutional right, quoting *Schware* v. *Board of Bar Examiners of the State of New Mexico, supra:*

> "Evidence ⁂961—sufficiency—misconduct—arrest. 7. The mere fact that a man has been arrested has very little if any, probative value in showing that he has engaged in any misconduct, and whatever probative force the arrest may have is normally dissipated when formal charges are not filed against the arrested person and he is released without trial."

The law is well settled that one cannot be denied the right to practice law or any occupation in a manner or for reasons contravening the Due Process Clause and Equal Protection Clauses of the Fourteenth Amendment to the Constitution. In the case at Bar the whole scheme and plan has been to deny the petitioner the right to practice law, particularly so where the matter was decided fully without testimony and without opportunity to defend himself, before the case had been formally docketed, then after the action of the lower court, being, as a follow up to shut him out on every possibility. Under the circumstances it would be a vain thing to proceed further to take testimony when, unmistakably the lower court has reached a decision without testimony being taken. One cannot frivolously deny the right to practice law due to personalities involved, and we cite *Schware* v. *Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, 1 L ed. 2nd 796, 77 S.Ct. 752, 64 A.L.R. 2nd 288. *Konigsberg* v. *State Bar of*

California, 353 U.S. 252, 77 S.Ct. 722; 1 L ed. 2nd 810; *Ex Parte Garland*, 18 L ed. 366; *Cummings* v. *Missouri*, 4 Wall. 277, 18 L ed. 356; *DeJonge* v. *Oregon*, 299 U.S. 353, 81 L ed. 278, 57 S.Ct. 255; *American Communications Association* v. *Douds*, 399 U.S. 382, 94 L ed. 925; *Barsky* v. *Board of Regents*, 98 L ed. 829, 247 U.S. 442, 74 S.Ct. 380, 27 A.L.R. 2d. 472, *Ex Parte John L. Tillinghast*, 7 L ed. 798; *Re. Ross*, 8 Cal. 2d 608, 67 Pac. 2d 84, 110 A.L.R. 217; *Re. Useldinger*, 35 Cal. 2d 723; *Haynes* v. *Brennan*, 135 N.Y.S. 2d 900; *Re. Zanger*, 266 N.Y. 156, 194 N.E. 72; *Lana* v. *Brennan*, 124 N.Y.S. 2nd 136 and cited cases.

Having covered the question of the rights of the petitioner under the Fourteenth Amendment to the Constitution, under the above cited cases, we now come to the question of default judgment, the law of Arkansas on default judgments is as follows:

> "Judgment by default shall be rendered by the Court in any case where an appearance or pleading, either general or special, has not been filed within the time allowed by this Act; provided, that the Court may *for good cause* allow further time for filing an appearance or pleading, *if application for granting further time is made before expiration of the period*, within which the appearance or pleading should have been filed; and that nothing in this Act shall impair the discretion of the Court to set aside any default judgment upon showing of excusable neglect, unavoidable casualty or other just cause." (Act 53, of 1957)

Petitioner is faced with a situation where, at the time he ordered the record to this court there was a final judgment, and for the purpose of this case where he had been shut out by a final judgment denying his petition after an order before the case had been formally docketed and after

his petition for admission had been denied; the record had been ordered and subsequently thereto two weeks later an opinion was written, apparently to cut petitioner out completely. Yet on the other hand, petitioner had already applied to this Court by ordering a record *before any such opinion was rendered*, and in view of this it was a final judgment from which petitioner is seeking review, the test not being whether or not under local rules the judgment is denominated final; but, rather where the record shows that the State Court has in fact fully adjudicated the rights of petitioner and that such adjudication is not subject to further review, *Department of Banking* v. *Louis H. Pink*, 317 U.S. 264, 87 L ed. 254, 27 U.S.C.A. 1257, also see as to decisions reviewable stating that the judgment is not determinative as to whether a state court judgment is final so as to be appealed to the Supreme Court; but the test as to whether the record shows that the order of the court has in fact fully adjudicated rights and that that adjudication is not subject to review in a state court, *Gospel Army* v. *City of Los Angeles*, 331 U.S. 543, 91 L ed. 1662; *Rescue Army* v. *Municipal Court*, 331 U.S. 549, 91 L ed. 1667, 1677, where in this Court made an inquiry regardless of the state procedure, and determined the federal question.

As to whether or not a state court can predetermine litigants rights under the Federal Constitution see *State of Indiana Ex Rel Dorthey Anderson, Petitioner* vs. *Harry Brand, Trustee of Chester County Township of Wabash County, Indiana*, 305 U.S. 95, 82 L ed 685.

A judgment of the highest court of a State denying a writ of prohibition to prevent a trial court from entertaining a cause for lack of jurisdiction is final and appealable, *Michigan Central Railroad Co.* vs. *George V. Mix*, 278 U.S. 492, 73 L ed. 470. The denial of a writ of prohibition so as to be subject to review by the Supreme Court of the United States, although the original controversy is not determined,

State of Missouri Ex Rel St. Louis, Brownsville, and Mexico Railway Co. vs. *Willson A. Taylor*, 69 L ed. 247;

Under the circumstances of the case involved there is no question but that the judgment is final and subject to review by this Court, see *Mandamus, Detroit and Mackinac Railway Co.* vs. *Michigan Railroad Commission*, 60 L ed. 802, *Louisiana Navigation Co.* vs. *Oyster Commission of Louisiana*, 57 L ed. 138, holding in effect that a judgment is final for review irrespective of how far it may be that the state law concluding such questions, were concluded during the litigation before a final judgment of a state court was rendered; also see *Hartman* vs. *Greenhow*, 26 L ed. 271; *Pope* vs. *Atlantic Coast Line Railroad Co.*, 345 U.S. 379, 97 L ed. 1094, 73 S.Ct. 749; see annotation 97 L ed. 208, citing numerous cases as to finality of judgment. In substance which it has been held that the test is no longer that the judgment is denominated as final but as to the substance of the decision the subject matter may be final, in the way it is treated by the trial court. Also see *Brown* vs. *Board of Education of Topeka*, 344 U.S. 141, 97 L ed. 152, also see *Madruga* vs. *Superior Court of California*, 346 U.S. 566, 98 L ed. 290, 74 S.Ct. 298; *Canizo* vs. *People of the State of New York*, 327 U.S. 82, 90 L ed. 545, considering the facts that the court's decision could not be appealed to a higher court of the state, this court took Jurisdiction, then see opinion L ed. 547, 548; *Tomkins* vs. *State of Missouri*, 323 U.S. 45, 89 L ed. 407; As to the essential elements of a State Court being final for review to this court see *Market Street Railway Co.* vs. *Railroad Commission of California*, 324 U.S. 528, 89 L ed. 1171, see annotation of said case second heading page 1187 of the L ed., under mandamus and prohibition being final for consideration in this Court, see the last cited case pages 1194, 1195, 1196 of the L ed. citing numerous cases in favor of petitioner.

Where the State Court has denied rights asserted, under

local law the protection which the Constitution guarantees is a question on which the petitioner is entitled to invoke the judgment of this Court even though the Constitutional protection invoked be denied on no federal grounds, it is the province of this court to inquire whether the decision of the state court rest upon a fair and substantial basis, *Demorest* vs. *City Bank Farmers Tco*, 88 L ed. 526, 321 U.S. 36, see page 530 in the opinion L ed. *Boyd* vs. *State of Nebraska*, 36 L ed. 103; *International Harvester Co. of America* vs. *State of Missouri Ex Rel Attorney General*, 58 L ed. 1276, one of the leading cases on finality of judgments is *Bambeni Petroleum Co.* vs. *Superior Court*, 284 U.S. 8-22, 76 L ed. 136, 78 A.L.R. 826.

In the case of *Konigsberg* vs. *State Bar of California and Committee of Bar Examiners of the State of California, supra* the Court held:

> "Appeal and Error ⁋745—review by Supreme Court of state court decisions—question of fact. 4. In reviewing a state court decision which is challenged as violating federal constitutional rights, the United States Supreme Court is justified in searching the record to determine whether the crucial finding has a reasonable basis in the evidence."

Calling the Court's attention to the record of the case we are attaching a certified photostatic copy of the docket entries in full for the Court to consider on its face value, see appendix D. It shows 2-17-61 ten days abd in time to file ans. (nunc pro tunc order) this is merely a docket entry, there is no order showing when the nunc pro tunc was granted, it merely shows that some time a nunc pro tunc was entered in the docket entry running back to 2-17-61, the rest of the record shows that a motion for default judgment was filed and served on 2-24-61, an answer to petition and response to the motion for default judgment, was filed

2-27-61 and served (service was not actually had) then the case was submitted on 3-6-61 and denied on 3-13-61, then on 3-27-61, a per curiam opinion was rendered.

We state unequivocably that at the time of filing of the motion for a default judgment on 2-24-61 that no notation was entered on the docket for an extension of time being granted; and if that same notation had been shown at the time that the motion for default judgment had been filed we would not have filed it, because counsel for petitioner was very careful in this in all respects.

We know that the record of this matter is incomplete but we submit to the court that an opinion had been rendered against petitioner before this case was formally docketed and that if this and the accusations does not show a denial of Due Process of Law, because of the matter being predetermined, then we are at a loss and we are strictly at the mercy of this Court to see that Justice shall be done.

Petitioner in this case had on several occasions gone before the old and new Chairman of the State Board of Law examiners claiming that he should have passed the Bar, and have been recommended for a license, and in all instances he was told that regardless of the grades made he would not be recommended for a license. The Secretary of the Board of Law Examiners had been consulted many times by the petitioner, and petitioner's character was placed in question, and was accused of communist affiliations, all of which petitioner has fully denied, and upon referral to the former Chairman, the petitioner was told that he was bound by the decisions of the Secretary. As far back as July 15, 1957, and again on April 15, 1958 (we know we are going outside the record, but we know this would have been developed if the opportunity had developed) the former Chairman had seriously questioned the petitioners moral character, and so had the Secretary of the Board of Law Examiners, the Secretary being violently opposed to

petitioner being recommended for a license to practice law. The present Chairman stated he also followed the decisions of the Secretary, in this manner. This in the face of the Chairman's response where he denied any knowledge of communist affiliations, and denied any knowledge of a bad moral character; but unequivocally stated in his response that petitioner should not go behind the last bar examination taken by him in July 1960. All of this denial in the face of the statement that he should not be allowed to consider his past grades on his past examination. Off the record we have been told that the past examination papers have been destroyed, the truth of this assertion, we do not have any knowledge of. We know that we have discussed matters outside of the record and the only reason we have is because we have been deprived of an opportunity to do any better. We beg the Court's indulgence and hope that the Court will bear with us, because this is such an unusual and unprecedented situation, and we know of no other place to seek Justice but to this Court.

The whole situation of the case at Bar appears to be one that the petitioner is being prevented from practicing law without valid and sufficient reasons and we quote:

> "Attorneys ⁂3, 5—right to practice law. 2. Irrespective of whether the practice of law is a "right" or "privilege" a person cannot be prevented from practicing law except for valid reasons, such practice not being a matter of state's grace."
>
> "Attorneys & 3—admission to practice—qualifications. 3. While a state can require high standards of qualification, such as good moral character or proficiency in its law, before it admits an applicant to the bar, any qualification must have a rational connection with the applicant's fitness or capacity to practice law; an applicant cannot be excluded merely because he is a Re-

publican, or a Negro, or a member of a particular church.

Attorneys & 3—admission to practice—standards. 4. Even in applying permissible standards, officers of a state cannot exclude a person from the practice of law when there is no basis for their finding that he failed to meet the standards, or where their action is invidiously discriminatory."

See *Schware* vs. *Board of Bar Examiners of the State of New Mexico, supra.*

In view of all the facts and law stated the petitioner feels that he has been discriminated against and we are at a loss to arrive at any other conclusion.

Conclusion

For the foregoing reasons the petition for writ of certiorari should be granted and the lower Court be reversed, and in the alternative that petitioner's rights should be spelled out according to law and according to his rights under the Fourteenth Amendment to the Constitution of the United States.

Respectfully Submitted,

THURGHMAN E. DIXON,
109-10 Glover Bldg.,
Little Rock, Arkansas,
Attorney for Petitioner.

APPENDIX A

"Ark. Stats. 25-101. Qualifications for Admission.—Every citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualification of learning and ability, may, upon application, and in the manner hereinafter provided, be admitted to practice as an attorney and counselor at law in the courts of this State Provided, It shall be lawful for the Supreme Court to admit to practice as an attorney and counselor at law in the courts of this State, any citizen under the age of twenty-one years who is of good moral character and who possesses the other requisite qualifications of learning and ability, and who is a graduate of any accredited, recognized or Class A Law School. (Civil Code, =760; Act Apr. 24, 1873, No. 88 (=760 (1st clause of 1st sentence), p. 213; 1917, No. 362, =1, p. 1787; C. & M. Dig., =596; Acts 1927, No. 199. =1, p. 673; Pope's Dig., =633.

Arkansas Stats. 25-102. Authority of Judge to License.—No judge of the Supreme, circuit or other court shall have power to license any applicant to practice law, but such power shall be exercised by the courts of the State, by proper orders, duly recorded. (Civil Code =760; Act. Apr. 24, 1873, No. 88 =1 (760 (2nd clause of 1st. sentence) p. 213; C. & M. Dig., =597; Pope's Dig., =634.

Ark. Stats. 25-103. Examination—Petition to Take Admission Upon Graduation—Oath—Entitled to Practice in All Courts Upon Admission.—Every applicant for admission to practice law in the courts of this State shall be examined pursuant to rules of the Supreme Court of this State and shall before his or her admission, produce to the court, by sworn petition, satisfactory proof of the foregoing qualifications, Provided, however, that all students who complete the full legal course required in the Law School of the Department of the University of Arkansas and receive a certificate or diploma from the constituted authorities thereof showing the graduation from such Law School, shall not be required to take an examination to the Bar, and to authorize such graduate to practice law in

the courts of this State, upon motion made to and order entered by the Supreme Court.

All persons admitted to practice law in this State shall make oath to support the Constitution of the United States and of the State of Arkansas, and faithfully to discharge the duties of the office upon which he is about to enter; and no person shall be licensed or permitted to practice law in any of the courts of record of this State until he has been admitted to practice by the Supreme Court of this State, and every person so admitted shall be entitled to practice in all the courts of this State, provided, that the provisions of this act (#25-101–25-103) shall not apply to anyone to whom a license has already been issued to practice law in any court of record in the State of Arkansas. (Civil Code #760; Act Apr. 24, 1873, No. 88 (#760 (2nd sentence), p. 213; 1917, No. 361, #1, p. 1786; C. & M. Dig., #598; Acts 1929, No. 32, #1, p. 53; Pope's Dig., #638.

Ark. Stats. 25-104. APPOINTMENT OF EXAMINING BOARD.—The Supreme Court may appoint a board of examiners, of practitioners in the Supreme Court for each judicial circuit to conduct examination for license, according to a standard adopted by the Supreme Court. (Acts 1917, No. 361, #2, p. 1786; C. & M. Dig., #599; Pope's Dig., #639.)

APPENDIX B

Amendment 28, to the Constitution of Arkansas, Regulating Practice of Law.

"Supreme Court—Rule Making Power.—The Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law."

APPENDIX C

Rules of the Supreme Court of Arkansas

Rule 3

Motions Must Be Written

"(a) All motions must be in writing, and such as are not merely incidental and non-controversial shall be supported by affidavit, unless the facts are of record.

(b) Eight clearly legible copies must be filed.

(c) Evidence of service of motions on opposing counsel must be furnished at time of filing.

(d) Within ten days after the service of a motion a response thereto may be filed, with evidence of service on opposing counsel."

Rule 17

Original Actions

"(a) Procedure in Courts of Equity to Govern.—In cases in which the jurisdiction of this court is in fact original, such as suits attacking the validity of state-wide petitions filed under Constitutional Amendment No. 7, the procedure in this court will conform to that prevailing in the chancery courts. Summons or other process will be issued by the clerk of this court, the respondent's pleading to be filed within the time allowed in chancery cases.

(b) Issues of Law Only Involved.—When the issues involve questions of law only, the parties shall file printed abstracts and briefs as in other cases, their time under Rule 7 to be calculated from the date on which the issues are joined.

(c) Issues of Fact.—Evidence upon issues of fact will be taken by a master to be appointed by this court. As a condition to the appointment of a master the court shall require both parties to file a bond, to be approved by the clerk, to secure the payment of all costs adjudged against them incurred in taking and transcribing the proof, including the fee of the master. In lieu of the bond above mentioned, the parties, the intervenors, or other interested

persons shall have the option of furnishing a bond executed by the real parties in interest.

Since Rule 17 (a) refers to the Statute on pleadings we quote.

"Ark. Stats. of 1947, No. 27-1135. TIME FOR APPEARANCE OR PLEADING TO COMPLAINT OR CROSS COMPLAINT.—A defendant to any complaint or cross-complaint must appear or plead either generally or specially the first day after expiration of the periods of time set forth below, as the case may be:

First. Where the summons has been served twenty (20) days in any county in the state:

Second. Where the summons has been served thirty (30) days outside the state;

Third. In the case of constructive service where publication of the warning order has been made as required by law, and thirty (30) days has elapsed since the making of the order and the appointment of the Attorney ad litem. (Civil Code, §126; Act Mar. 27, 1871, No. 48, §1, §2, p. 109; 1947, No. 53, §1, p. 197.)

RULES GOVERNING ADMISSION TO THE BAR

"The State Board of Law Examiners is hereby constituted, before whom all applicants for license must appear.

The rule governing composition of the Board of Law Examiners was amended Jan. 11, 1960, to provide that the Board will consist of ten members, who shall serve for a term of three years. Appointment will be made by the Supreme Court to fill vacancies. Vacancies occurring from causes other than expiration of term of office will be filled as they occur, and the person so appointed shall serve the remainder of the term of his predecessor.

The Board, from its members shall select its own chairman. A non-member secretary, who shall reside in Little Rock, shall also be selected."

Time and Place of Examination

"The Board shall meet semi-annually on the first Monday in March and the third Monday in July of each year, at the State Capitol in Little Rock, for the purpose of examining applicants. Provided, the Board may meet at such other times as it may designate, for the purpose of considering applicants under the reciprocity rule, or from members of the bar of this state admitted to practice in the Circuit and Chancery Courts prior to July 1, 1917."

Duties of the Board

"The Board shall provide questions to be used on examinations, and shall furnish to each applicant a set of such questions, on the day of examination.

The Board shall grade the examination papers and as a Board ascertain the average of each applicant.

Applicants shall be actual bona fide residents of Arkansas for at least six consecutive months immediately preceding their application, and intend to engage in the active practice of law in this state within six months after licensed. The names and addresses of applicants making an average grade of 75 per cent on all subjects, and who shall have been found to be of good moral character, shall be certified to the Clerk of the Supreme Court, with a recommendation that they be licensed as attorneys-at-law and solicitors in chancery."

Duties of the Clerk

"Upon receipt of the report from the Board recommending an applicant for license, the clerk shall immediately notify the said applicant, sending him a petition for license and oath of office. Said petition, when properly executed and returned, shall be presented to the Court, when the order of enrollment will be made and license issued."

Duties of the Applicant

"The applicant shall execute the petition and take the oath before some officer authorized by law to administer official oaths (a notary public cannot do so), and return the petition to the clerk of the Supreme Court, together

with the fee provided by law ($15.00). Each applicant for admission to the Bar is required to answer under oath a questionnaire on forms prescribed by the Court. Should any answer be false in a material respect, the applicant will be rejected if the fact is ascertained before enrollment; but if enrolled, such attorney is subject to disbarment."

Duties of the Secretary

"The duties of the Secretary are purely ministerial. He shall attend to all necessary correspondence of the Board and shall furnish to applicant all needed information relative to, and petitions for leave to take the examination.

"He shall give such bond as may be required by the Board. He shall keep a faithful account of all fees collected and expenditures made; make a detailed report to the Board at each regular meeting; and shall perform such other duties as may be directed by the Board."

Examination Subjects Passing Grade

"The rule entitled "Examination Subjects Passing Grade" was amended March 14, 1960, as follows: "All examinations shall be in writing and shall cover the following subjects: Torts, Contracts, Real Property, Procedure—Trial and Appellate, Criminal Law and Procedure, Equity, Constitutional Law, Corporations, Evidence, Conflict of Laws, Wills and Probate Law, Agency, Trusts, and such other subjects as the Board may direct.

Applicants must make an average of 75 per cent on all subjects in order to pass."

Applications to Take Examination

"All applicants for leave to take the examination shall be filed with the Secretary at least one month in advance of the date of the examination."

Expense Fee—Amended March 14, 1960

"A fee of $25.00 must accompany the application to take the examination, and a fee of $50.00 must accompany the application for admission without examination (reci-

procity rule), remittance being made by postoffice money order or Little Rock exchange, payable to the State Board of Law Examiners. The fees thus provided shall be used by the Board to defray the expense of examination, necessary expense of the Board members while attending meetings and to provide a reasonable compensation for the services of its Secretary, which amount shall be fixed by the Board."

REQUIREMENTS FOR TAKING EXAMINATION

"Acting under Amendment No. 28 and also the Court's inherent power, and in accordance with the report of the Committee of the Junior Bar Section of the Bar Association of Arkansas, the Supreme Court adopted the following Rules effective July 1, 1949, governing admission to the Bar.

1. No candidate shall be allowed to take the bar examination who has not completed at least two years of pre law study in a college approved by the State Board of Law Examiners.

2. No candidate shall be allowed to take the bar examination unless he meets one of the following requirements.

a. Satisfactory completion of 1250 class room hours of instruction in a law school approved by the State Board of Law Examiners; or

b. Four years of full-time private study in a law office after registration with the State Board of Law Examiners.

3. Graduation from a law school shall not confer the right of admission to the bar, and every candidate shall be subject to an examination.

4. From and after the July 1960 examination any applicant who has taken the examination unsuccessfully three or more times may be allowed to retake the examination only if at least twelve months have elapsed since last taking the examination."

General Information

"Admission to practice is based upon grade made on the examination and moral qualifications.

"The examination is in writing. Each applicant must provide himself with the necessary pen and paper.

No questions from previous examinations are available for distribution.

For information relative to the examination and application to take same consult the Secretary, who should be addressed as Secretary of State Board of Law Examiners, Little Rock, Arkansas.

The former Rules of the Supreme Court of Arkansas as to the Admission to Practice Law, see Volume 207 Arkansas Reports XXXiii, XXXiv:

"Graduates of University of Arkansas School of Law and Arkansas Law School"

"Every applicant for admission to practice in the courts of this State shall be examined pursuant to rules of the Supreme Court of this State, and shall before his or her admission produce to the Court, by sworn petition, satisfactory proof of the qualifications required by Chapter XII, Pope's Digest.

Provided, however, that all students who shall have completed the full legal course required by the University of Arkansas School of Law, and have received a diploma from the constituted authorities thereof showing graduation from the Law School, shall not be required to take an examination.

And further provided, any applicant who shall have completed a four year college course and has received his or her college degree from the constituted authorities thereof, showing graduation from the college and who in addition thereto shall thereafter have completed a three year law course in the Arkansas Law School, and received a diploma from the constituted authorities thereof, showing graduation from the Arkansas Law School, shall not be required to take an examination, and such graduation diploma shall be sufficient proof of the qualifications of such applicant for admission to the bar, and to authorize such graduate to practice law in the courts of this State and may be

enrolled upon motion made to and entered by the Supreme Court."

GENERAL INFORMATION

"Admission to practice is based upon grade made on the examination and moral qualifications. No literary or law degree is required to entitle one to take the examination.

The examination is in writing and ordinarily covers a period of two days. Each applicant must provide himself with the necessary pen and paper.

No questions from previous examinations are available for distribution.

For information relative to the examination and application to take same, consult the Secretary, who should be addressed as Secretary of State Board of Law Examiners, Little Rock, Arkansas."

APPENDIX D

Photostatic copy of docket entries

COURT ORDERS

2-17-61 ten days addn time to file ans. (nunc pro tunc order).

2-24-61 Appellant's motion for judgment by default. Served.

2-27-61 Respondent's answer to petition, and response to motion for default judgment. Served.

3-6-61 Submitted on motion for default judgment.

3-13-61 Motion denied.

3-27-61 *Per curiam* opinion pursuant to order of denial.

STATE OF ARKANSAS,
In the Supreme Court:

I, PHILIP N. GOWEN, Clerk of the Supreme Court of Arkansas, do hereby certify that the foregoing photographed material constitutes a true copy of the docket entries in the case of James Joseph Cenac v. State Board of Law Examiners, No. 5-2404.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the Supreme Court of Arkansas, this 4th day of April, A.D. 1961.

PHILIP N. GOWEN,
Clerk.

APPENDIX E

ORIGINAL PROCEEDING

SUPREME COURT OF ARKANSAS

No. 2404

JAMES JOSEPH CENAC, *Petitioner*,

vs.

STATE BOARD OF LAW EXAMINERS OF ARKANSAS, *Respondent*

DENIED, March 13, 1961.

PER CURIAM ORDER

Motion for judgment by default denied.

Filed March 27, 1961, Philip N. Gowen, Clerk.

SUPREME COURT OF ARKANSAS

No. 2404

JAMES JOSEPH CENAC, *Petitioner*,

vs.

STATE BOARD OF LAW EXAMINERS OF ARKANSAS, *Respondent*

ORIGINAL PROCEEDING

DENIED

PER CURIAM OPINION

On February 1, 1961, the Petitioner officially filed his Petition in this Court praying that the State Board of Law Examiners be required to show cause why he should not be admitted to practice law, and upon their failure to do so, that he be licensed to so practice law. The claims upon which this prayer is based are set forth in the Petition. No summons was caused to be issued by the Petitioner directed to the Respondent, but on Friday, February 17, 1961, the Honorable John Haley, Attorney, Chairman of the Board of Law Examiners, was notified personally by the Clerk of this Court of the date of filing of said Petition. Haley thereupon requested additional time in which to file an Answer and Response. Pursuant to this request, the Clerk of this Court granted the said Haley ten extra days in which to file an Answer and Response. Thereafter, on February 24, 1961, Petitioner filed a Motion for Default Judgment; and three days later, on February 27, 1961, the Respondent's Answer and Response to the Motion for Default Judgment was filed, well within the time allowed by the Clerk of this Court, as shown by the docket entry. On March 6, 1961 the Petitioner's Motion for Default Judgment was submitted for the consideration of this Court, and on March 13, 1961 this Court entered an Order overruling the Motion for Default Judgment. This Per Curiam Opinion follows pursuant thereto. With the Motion for

Default denied, and issues joined, the Attorney for the Petitioner has been advised that any issue of fact may be handled in accordance with Rule 17(c) of this Court.

The reasons for overruling Petitioner's Motion for Default Judgment are hereinafter set out:

This being an original action (conceding without deciding that said action is properly brought in this Court) the procedure is governed by Rule 17(a) of this Court. In essence, Rule 17(a) states that the procedure in such an action "will conform to that prevailing in the chancery courts. Summons or other process will be issued by the clerk of this court, the respondent's pleading to be filed within the time allowed in chancery cases." Under this procedure the Respondent's Answer would be due within twenty days after the Petition was filed and summons issued and served thereon. In this case however no summons was ever issued. We find that the Respondent had no notice of the filing of the Petition until approximately three days before the Answer would have been due. This being the case the Clerk, having full authority of this Court to do so, granted the Respondent ten extra days in which to file a Response, making said Response due on March 26, 1961. The Answer and Response, as above stated, was filed within that time, namely on February 27, 1961. This being true, Petitioner was not entitled to a Default Judgment.

The Court also notes that the Petitioner left his Petition with the Clerk of this Court, without advancing the filing fee, in the early part of December, 1960, and this was held awaiting the payment of the fee; and all the matters hereinafter mentioned that occurred from December, 1960 to February 1, 1961 were because of this irregular filing. On December 14, 1960 a Committee composed of three Judges of this Court to supervise the work of the Examining Board met with the Attorney for the Petitioner and Mr. Haley, Chairman of the Board of Examiners. The result of this meeting was reported to the full Court regularly convened, and on January 9, 1961, the Court directed the Clerk of this Court to notify the Petitioner's Attorney by letter. On

January 10, 1961 the Clerk of this Court wrote the letter to Cenac's Attorney stating among other things that:

> "The Court has instructed me to inform you that the above Petition has been denied, pursuant to the recommendation of the Court's standing Committee upon such matters.
>
> "The Committee's recommendation was based upon the hearing at which you were present, along with the chairman and the secretary of the Board of Law Examiners. From the statements made at the hearing the Committee found it to be an undisputed fact that the examiners grade the papers by number only, and do not know the name of the particular applicant whose papers are being graded. It is accordingly the Court's conclusion that Mr. Cenac's failure to make a passing grade upon the examination has been the sole reason for his not being admitted to practice."

In view of all of the foregoing it is the opinion of this Court that the Petitioner's Motion for a Default Judgment should be, and it is hereby, denied.

(6571-4)